

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

NEFTALI PADUARI,

Plaintiff,

vs.

WARDEN D. NEVEN, *et al.*,

Defendants.

Case No. 2:13-cv-00155-JCM-CWH

**FINDINGS AND**  
**RECOMMENDATION**

This matter is before the Court on Plaintiff's Motion for Default Judgment (#22), filed on November 21, 2013. This matter is also before the Court on Defendants' Motion to Enlarge Time to File Answer (#23), filed on November 22, 2013.

Plaintiff seeks a default judgment against Defendants for \$85,000 because they failed to file an Answer within sixty (60) days of being ordered to do so on August 23, 2013. *See* Order (#10). In doing so, Plaintiff generally refers to the Federal Rules of Civil Procedure, but does not cite a specific rule or any other authority for the relief requested. Accordingly, the Court finds that Plaintiff has failed to comply with Local Rule 7-2(d) that specifies, "The failure of a moving party to file points and authorities in support of the motion shall constitute a consent to the denial of a motion."

Furthermore, Defendants filed an Answer on November 22, 2013 along with a motion requesting an extension of the Answer deadline of October 22, 2013. Defendants cite Federal Rule of Civil Procedure 6(b) that allows the court to permit an extension of time after the expiration of the deadline where the failure to act was the result of excusable neglect. Defense counsel indicates that the excusable neglect standard is satisfied based on several factors; she was out of the country from October 3, 2013 to October 16, 2013, involved in a trial from November 6, 2013 to November 7, 2013, which involved a calendar call on October 22, 2013, and made an inadvertent mistake in

1 failing to submit an extension request earlier. Moreover, Defense counsel asserts that she has  
2 actively litigated this matter. Accordingly, the Court finds that Defendants have satisfied the  
3 excusable neglect standard and an extension of time to Answer until November 22, 2013 should be  
4 granted.

5 Based on the foregoing and good cause appearing therefore,

6 **RECOMMENDATION**

7 **IT IS HEREBY RECOMMENDED** that Plaintiff's Motion for Default Judgment (#22) be  
8 **denied.**

9 **IT IS FURTHER RECOMMENDED** that Defendants' Motion to Enlarge Time to File  
10 Answer (#23) be **granted.**

11 **NOTICE**

12 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be  
13 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has  
14 held that the courts of appeal may determine that an appeal has been waived due to the failure to  
15 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit  
16 has also held that (1) failure to file objections within the specified time and (2) failure to properly  
17 address and brief the objectionable issues waives the right to appeal the District Court's order  
18 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,  
19 1157 (9<sup>th</sup> Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9<sup>th</sup> Cir. 1983).

20 DATED this 26th day of November, 2013.

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24 **C.W. Hoffman, Jr.**  
25 **United States Magistrate Judge**  
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